

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

FEB 13 2007

SUBJECT: EPA Approval of Delaware's National Pollutant
Discharge Elimination System (NPDES) Regulation
Revisions

FROM: Jon M. Capacasa, Director
Water Protection Division



TO: Donald S. Welsh
Regional Administrator

The purpose of this letter is to approve the State of Delaware's National Pollutant Discharge Elimination System (NPDES) regulation revision.

Background

- The State of Delaware commenced its review of its Regulations Governing the Control of Water Pollution as a revision to the State's authorized NPDES program in the early 1990's. EPA Region III has been working together with Delaware's Department of Natural Resources and Environmental Control (DNREC) on this review to make the amended regulations consistent with Federal regulations.
- The Delaware regulation revision includes amendments to Section 1 through Section 8 and Section 10 through Section 13 of the Regulations Governing the Control of Water Pollution. The majority of the amendments focus on DNREC's issuance and administration of NPDES permits in the State of Delaware. In addition, DNREC updated its regulations for the construction and operation of wastewater pollution control facilities and adopted regulations that formalize a periodic assessment of municipal treatment plant performance and infrastructure needs.
- Delaware officially submitted its revised NPDES regulations for review to EPA Region III on July 22, 2003. Certification from the State Attorney General that the amendments were duly adopted pursuant to State law and that Delaware law provides adequate authority to implement the revisions was provided on November 19, 2003.

Procedures for Revision of State NPDES Programs

- Federal regulations at 40 CFR § 123.62 require EPA to approve or disapprove NPDES major program revisions, which become effective upon approval of the Administrator. Approval authority has been delegated to the Regional Administrator.

- As EPA determined that this NPDES program modification is substantial, in accordance with the Federal regulations, EPA issued a public notice and provided an opportunity for the public to comment. The public notice was published in the Wilmington News Journal and the Delaware State News on January 21, 2004, and in the Federal Register on February 10, 2004, for a 45-day comment period. No comments in response to these public notices were received. Pursuant to 40 CFR § 123.62 notice of the approval of this substantial revision will be published in the Federal Register.
- Although approval authority has been delegated to the Regional Administrator, concurrence with the Region's approval from the EPA Headquarters Office of Water and the Water Enforcement Division in the Office of Enforcement and Compliance Assurance is required. Concurrence was received from the Water Enforcement Division on November 7, 2006, and from the Office of Water on January 12, 2007.

Endangered Species Act Consultation

- In accordance with Section 7 of the Endangered Species Act (ESA), EPA prepared a biological evaluation to determine if our approval of the revised NPDES regulations would adversely affect threatened and endangered species and their critical habitat in Delaware. Our biological evaluation found that our approval action would not adversely affect threatened or endangered species.
- We submitted the biological evaluation to the Fish and Wildlife Service and the National Marine Fisheries Service on August 8, 2003. EPA has received concurrence with our finding from both the Fish and Wildlife Service and the National Marine Fisheries Services on October 9, 2003 and November 7, 2003, respectively.

Next Steps

- As the authority to approve or disapprove a revision to a state's NPDES program lies with the Regional Administrator, a letter has been prepared for your signature.
- The Federal Register notice indicating EPA's approval of this substantial revision is also included in this package and requires the Regional Administrator's signature.

